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No. 96-901

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

EDWARD RONWIN, Petitioner

v.

DORI ALTMAN, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONER'S REPLY BRIEF

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6 pp

ARGUMENT

ALTMAN's Brief contains several comments which do not accord with the facts of record or are irrelevant. The following is an effort to correct same:

I. On pp. 4 & 10, ALTMAN's Brief, ALTMAN claims that no due process or "constitutional questions were raised on appeal to the Eighth Circuit." On p. 11, RONWIN's Opening Brief informed the 8th Circuit that Juror GUNDERSON's conduct denied RONWIN "a 'fair trial,' which includes the right to object to admission of evidence, the right to cross-examination and to rebut evidence;" i.e., denial of due process.

II. On p. 5, ALTMAN's Brief, ALTMAN claims, in effect, that RONWIN's claim that conduct such as GUNDERSON's has not been addressed in federal courts, is "simply not the case." Instead of citing a federal case to prove ALTMAN's position, ALTMAN cites Tanner v. U.S., 483 U.S. 107 (1987). However, as ALTMAN states that case deals with the interpretation of Evid. Rule

606(b), which is not at issue herein.

III. On pp. 3 & 9, ALTMAN's Brief, ALTMAN attempts to make it appear that RONWIN's neck injury was caused in the prior 1991 accident. Dr. BENSON testified that the 1993 accident, (the one involved in this action) caused RONWIN's neck symptoms, (TT, pp. 362-363). Dr. BENSON also testified that RONWIN had a "soft-tissue" injury which was not seen in the X-ray evidence from earlier neck involvement, (TT 305-310).

IV. On p. 8, ALTMAN's Brief, ALTMAN states that RONWIN had "pre-existing...shoulder injuries." While RONWIN had a shoulder injury in the 1991 accident, it was the left shoulder. In 1993 it was RONWIN's right shoulder which suffered the rotator cuff tear. (In fact, the 1991 shoulder problem did not involve a rotator cuff tear).

V. On p. 7, ALTMAN's Brief, ALTMAN attempts to cast doubt on whether GUNDERSON acted as RONWIN claims. RONWIN's Rule 60(b)(6) motion asked for oral argument and the accompanying brief sugges-

ted to the District Court that the court order GUNDERSON to appear for examination at oral argument. (At the time, GUNDERSON was serving on a continuing jury venire panel). While the District Court declined to hold oral argument, it clearly accepted that GUNDERSON acted as RONWIN claimed, see p.A-4, RONWIN's Petition herein.

VI. On p. 4, ALTMAN's Brief, ALTMAN notes that GUNDERSON "declined to sign an affidavit." That refusal was not made in the conversation between RONWIN and GUNDERSON on Nov. 5, 1995, in which GUNDERSON admitted his improper activity; rather RONWIN attempted to contact GUNDERSON about 9 days later to ask GUNDERSON to sign an affidavit, but GUNDERSON refused to respond, as averred in RONWIN's affidavit in support of the Rule 60(b)(6) motion.

VII. On p. 2, ALTMAN's Brief, ALTMAN states that the investigating officer placed ALTMAN's speed at "five miles per hour at the time of impact." The officer admitted getting that figure from ALTMAN, (TT, 101-102). Since ALTMAN testified

that she was looking to the left while her vehicle was moving straight ahead into RONWIN's, (TT 52, 49), she could not see her speedometer any more than RONWIN's vehicle; hence, her estimate of 5 m.p.h. is sheer speculation. On the other hand, the Cadillac body shop manager, testifying from is long experience, states that ALTMAN's speed had to be greater than 5 m.p.h. (or no damage to RONWIN's vehicle would occur), (TT 141) and could have been as much as 10 m.p.h., (TT 137); that testimony was uncontradicted. As admitted by ALTMAN, RONWIN's vehicle suffered damage to the extent of $745.18, p. 2, ALTMAN's Brief. Since to many Americans, that sum is not "peanuts," RONWIN's vehicle damage was not negligible, contrary to ALTMAN, p. 8, ALTMAN Brief.

VIII. ALTMAN's claim that RONWIN "is in no position to refute ALTMAN's testimony based upon direct observations," p. 8, ALTMAN Brief, is incorrect. Since ALTMAN was looking to the left, while her vehicle was moving straight ahead, her

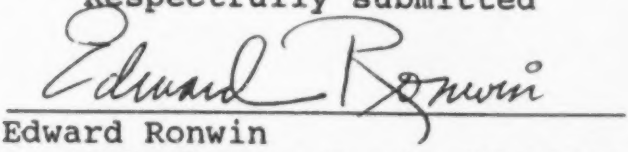
"direct" observations are speculation.

IX. Contrary to ALTMAN's posture, p. 9, ALTMAN's Brief, GUNDERSON's "information", which was deliberated upon by the jury, was wholly inconsistent with the evidence adduced at trial, see pp. 5-6, RONWIN's Petition herein.

CONCLUSION

The arguments in ALTMAN's Brief do not truly controvert those in RONWIN's Petition herein. It is urged that this Court grant the Writ of Certiorari.

Respectfully submitted



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